



REPUBLIC OF KENYA



KENYA LAW
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**Ramogo & another v Integrity Holdings Limited (Environment & Land
Case 173 of 2019) [2024] KEELC 1362 (KLR) (13 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1362 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 173 OF 2019**

**BM EBOSO, J
MARCH 13, 2024**

BETWEEN

JOEL RADUMA RAMOGO 1ST PLAINTIFF

MARY ATIENO ONDORO 2ND PLAINTIFF

AND

INTEGRITY HOLDINGS LIMITED DEFENDANT

RULING

1. Falling for determination in this ruling is the notice of motion dated 31/10/2023, brought by Mary Atieno Ondoro [the applicant]. Through the motion, the applicant seeks an order enlarging the time within which to lodge and serve a notice of appeal against the Judgment rendered by this Court on 25/9/2023. The application is premised on the grounds outlined in the motion and in the applicant's supporting affidavit sworn on 30/10/2023. It was canvassed through oral submissions tendered in the virtual court on 17/1/2024.
2. The applicant's case is that the period within which to lodge an appeal had lapsed by the time she gave instructions to her advocates to lodge a notice of appeal against the Judgment rendered on 25/9/2023. She adds that whereas her advocates shared with her information relating to the Judgment on 25/9/2023, she was only able to read the advocates' update on 17/10/2023. She attributes this to the fact that she "was on the move due to the nature" of her job. It is her case that the delay is not inordinate.
3. The defendant, Integrity Holdings Limited [the respondent], did not file a response to the application, Neither did they attend the hearing.
4. I have considered the application and the applicants' oral submissions. I have also considered the relevant legal framework and jurisprudence. The single question to be determined in this ruling is



whether the application meets the criteria upon which jurisdiction to enlarge time for initiating an appeal in the Court of Appeal is exercised.

5. The jurisdiction of this court to enlarge the time within which to lodge and serve a notice of appeal in relation to a decision of this court is discretionary and is donated by Section 7 of the [Appellate Jurisdiction Act](#). The said section provides as follows:

The High Court may extend the time for giving notice of intention to appeal from a judgment of the High Court or for making an application for leave to appeal or for a certificate that the case is fit for appeal, notwithstanding that the time for giving such notice or making such appeal may have already expired: Provided that in the case of a sentence of death no extension of time shall be granted after the issue of the warrant for the execution of that sentence.

6. For avoidance of doubt, by dint of Article 259 of [the Constitution](#), reference to “The High Court” in Section 7 of the [Appellate Jurisdiction Act](#) is to be construed to include courts of equal status with the High Court which succeeded the High Court in terms of jurisdiction over specific disputes under [the Constitution](#) of Kenya 2010.

7. The criteria upon which jurisdiction to enlarge time is exercised was outlined by the Supreme Court of Kenya in [Nicholas Kiptoo Arap Korir Salat v The Independent Electoral and Boundaries Commission & 7 Others](#) [2014] eKLR as follows:

- a. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court;
- b. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
- c. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case-to-case basis;
- d. Whether there is a reasonable reason or the delay. The delay should be explained to the satisfaction of the court;
- e. Whether there will be any prejudice suffered by the respondents if the extension is granted;
- f. Whether the application has been brought without undue delay; and
- g. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”

8. Has the applicant satisfied the criteria for grant of an order for enlargement of time? The impugned Judgment was rendered on 25/9/2023. By dint of the provisions of rule 77 of the [Court of Appeal Rules](#) 2022, the applicant was required to lodge a notice of appeal within 14 days reckoned from 25/9/2023. The 14 days period within which the applicant was to lodge the notice lapsed on 9/10/2023. Under rule 79 of the [Court of Appeal Rules](#) 2022, she was required to serve the notice of appeal on all the respondents in Seven (7) days before or after lodging the notice of appeal.

9. The application under consideration was brought on 2/11/2023, a period of 23 days after the lapse of the prescribed limitation period of 14 days. The applicant has explained that although her advocates shared with her an update relating to the Judgment, she was not able to read the update until 17/10/2023, hence the delay in lodging and serving a notice of appeal. The above explanation was not challenged by the respondent. Put differently, the application is unopposed.



10. Given the above explanation and the fact that the application is unopposed, the court will exercise discretion and grant the applicant [the 2nd plaintiff] an enlargement of seven (7) days within which to file and serve a notice of appeal relating to the Judgment rendered by this court on 25/9/2023. There will be no order as to costs of the application.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 13TH DAY OF MARCH 2024

B M EBOSO

JUDGE

In the Presence of: -

Mr Bariki Advocate for the Plaintiffs

Court Assistant: Hinga

THIKA ELC CASE NO 173 OF 2019 (RULING) Page 2

